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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,442	09/19/2003	Kazutoshi Kaizuka	45144-00042	4509

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Squire, Sanders & Dempsey L.L.P  
14th Floor  
801 S. Figueroa Street  
Los Angeles, CA 90017-5554

EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 09/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/664,442

Applicant(s)

KAIZUKA, KAZUTOSHI

Examiner

Eisa B. Elhilo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-12 is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                      |                                                                   |
|--------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                          | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

- 1 This action is responsive to the amendment filed on August 14, 2006.
- 2 A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/14/2006 has been entered.

#### *Claim Rejections - 35 USC § 103*

- 3 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,540,791 B1) in view of Roller (US 4,857,306).

Dias (US' 791 B1) teaches a hair dyeing composition comprising oxidative dyes such as aromatic diamines and aminophenols in the amounts of 0.1 to 3% which within the claimed range as claimed in claims 1 and 2 (see col. 32, lines 7-47), non-oxidative hair coloring compounds of sulfur dyes such as 1-hydroxy-4-(ortho sulfo para-tolueno)-anthraquinone as claimed in claim 3 (see col. 42, lines 43-47 and col. 43, the bottom formula) and nitro dyes of nitroaminobenzenes or nitroaminophenols as claimed in claim 4 (see col. 41, lines 46-48), wherein the dye compounds (non-oxidative hair coloring compounds) are presented in the amounts of 0.001% to about 5% by weight which within the claimed range as claimed in claims

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3 and 4 (see col. 31, lines 45-47), basic Brown 16 as claimed in claim 5 (see col. 41, line 54).

The dyeing composition further comprises salicylic acid (see col. 47, line 20). Dias also teaches a method for dyeing hair comprising applying to the hair the dyeing composition as described above wherein the method is similar to methods claimed in claims 6 and 7 (see 54, claim 17).

The claims differ from the reference by reciting a powder comprising a silicon dioxide based poly-element mineral selected from the group consisting of perlite, pitchstone and tourmaline.

However, Dias (US' 791 B1) suggests the use of metallic dyes and metal chelate dyes in a dyeing composition (see col. 41, line 28).

Roller (US' 306) in analogous art of cosmetic formulation teaches a composition comprising precious stone powder such as tourmaline in the amount up to 10% in weight (see col. 2, lines 3-7 and line 35).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to be motivated to modify the composition of Dias (US' 791) by incorporating the tourmaline compound in the claimed amount as taught by Roller (US' 306) to arrive at the claimed subject matter because Dias (US' 791 B1) suggests the use of metallic and metal dyes in a dyeing composition (see col. 41, line 28). Roller as a secondary reference clearly teaches a cosmetic composition comprising tourmaline compound (see col. 2, lines 3-7 and line 35), and, thus, a person of the ordinary skill in the art would be motivated to incorporate the tourmaline compound as taught by Roller (US' 306) in the dyeing composition of Dias (US' 791 B1) with a reasonable expectation of success for improving the dyeing properties of the composition and

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would expect such a composition to have similar results to those claimed, absent unexpected results.

***Allowable Subject Matter***

4        Claims 8-12 are allowed because the prior art of record do not teach or disclose the limitations of these claims wherein the claims require the combination of at least one dye and a powder comprising perlite or pitchstone in the claimed amount.

***Response to Applicant's Arguments***

5        Applicant's arguments filed on August 14, 2006 have been fully considered but they are not persuasive for the reasons set forth in the previous office action mailed on March 13, 2006.

Further, applicant has not shown on record the criticality (comparative data or showing) of the combination of the dye and the powder of perlite, pitchstone or tourmaline in the claimed composition over the composition of the closest prior art of record.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Eisa Elhilo  
Primary Examiner  
Art Unit 1751

September 12, 2006